

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**TEXO ABC/AGC, INC.; ASSOCIATED
BUILDERS AND CONTRACTORS, INC.;
NATIONAL ASSOCIATION OF
MANUFACTURERS; AMERICAN FUEL
& PETROCHEMICAL
MANUFACTURERS; GREAT
AMERICAN INSURANCE COMPANY;
ATLANTIC PRECAST CONCRETE, INC.;
OWEN STEEL COMPANY; and OXFORD
PROPERTY MANAGEMENT, LLC;**

Plaintiffs,

v.

EDWARD C. HUGLER, Acting Secretary of Labor, United States Department of Labor; **DOROTHY DOUGHERTY**, Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration; and **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**, United States Department of Labor,

Defendants.¹

Civil Action No. **3:16-cv-1998**

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION
FOR 60-DAY STAY OF PROCEEDINGS**

Defendants have moved to stay proceedings in this case for 60 days. [ECF #57]. Plaintiffs agree that a stay is advisable so that the new Secretary of Labor, once confirmed, can review the merits of the challenged rule, as the Department is now required to do in accordance with

¹ Edward C. Hugler, Acting Secretary of Labor, has been substituted for Thomas E. Perez as a defendant in this case, and Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, has been substituted for David Michaels as a defendant, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

recently issued Executive Orders and Memoranda of the President.² However, a stay that is not accompanied by an equivalent delay in enforcement of the approaching July 1 deadline for compliance with the challenged injury reporting requirements of the new Rule would prejudice Plaintiffs' rights to judicial review of the rule before enforcement begins.

It is fully within the power of the Department to delay enforcement of the July 1 deadline, pending completion of the regulatory review in which the Department is required to engage. Indeed, the Department delayed by 60 days on its own initiative the enforcement of the anti-retaliation provisions of the new Rule. [ECF #13]. Subsequently, at the Court's request, the Department delayed enforcement of the anti-retaliation provisions by an additional 30 days in order to allow the Court additional time to review the issues raised in the case. [ECF #32, 34]. Significantly, those delays occurred without any of the compelling grounds for delay presented by the recent change in Administrations and the Department's mandate to conduct a full regulatory review of the new Rule.

Plaintiffs therefore request that the Court condition the grant of Defendants' 60-day stay request on the Department's agreement to an equivalent stay of the July 1 enforcement date for the public injury reporting provisions of the new Rule. Such a stay should allow the incoming new governing officials at the Department and/or this Court to fully review the regulatory justifications and burdens imposed by the new Rule.

² See, e.g., EO 13777, "Enforcing the Regulatory Reform Agenda," 82 Fed. Reg. 12285 (Mar. 1, 2017); EO 13771, "Reducing Regulation and Controlling Regulatory Costs," 82 Fed. Reg. 9339 (Feb. 3, 2017); and Presidential Memorandum: Implementation of Regulatory Freeze, M-17-16 (Jan. 24, 2017).

Respectfully submitted,

Dated: March 31, 2017

Of Counsel:

Linda E. Kelly
Patrick N. Forrest
Leland P. Frost
Manufacturers' Center for Legal Action
733 10th Street, NW, Suite 700
Washington, DC 20001
(202) 637-3000
*Counsel for the National
Association of Manufacturers*

Richard Moskowitz
General Counsel
American Fuel & Petrochemical
Manufacturers
1667 K Street NW, Suite 700
Washington, DC 20006
202.552.8474

Lawrence P. Halprin
Douglas Behr
Keller and Heckman, LLP
1001 G St., N.W.
Suite 500 West
Washington, D.C. 20001
202-434-4177

/s/ Steven R. McCown

Steven R. McCown
TX Bar 13466500
Maurice Baskin*
DC Bar 248898
Thomas Benjamin Huggett
PA Bar 80538
LITTLER MENDELSON, P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, TX 75201-2931
(214) 880-8100

Attorneys for Plaintiffs

*pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Steven McCown
Steven McCown